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JANET STEGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff

V.

GEORGIA-PACIFIC LLC,

Defendant.

CIVIL ACTION NO. C-07-3944 (SBA)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF JANET STEGE FOR
LEAVE TO INTERVENE**

Date: March 4, 2008
Time: 1:00 p.m.
Courtroom: 3, 3rd Fl. (Oakland)
Judge: Hon. Saundra B. Armstrong

I. INTRODUCTION AND STATEMENT OF FACTS.

Plaintiff/Intervenor JANET STEGE seeks leave of this Court to file a Complaint in Intervention (attached as Exhibit A to the accompanying Declaration of Kathryn Burkett Dickson in Support of the Motion to Intervene (“Dickson Dec.”) in order to intervene in the underlying action filed by the Equal Employment Opportunity Commission (“EEOC” or “Commission”).¹

¹ The Complaint in Intervention names as Defendants Georgia-Pacific Corrugated, LLC and Georgia-Pacific Holdings, LLC, rather than Georgia-Pacific LLC, as originally named in the Complaint originally filed by the EEOC. Counsel for the Commission has notified counsel for Party/Intervenor STEGE, as well as counsel for Defendant, that it will shortly be seeking to amend the Complaint to substitute these Defendants as the proper employers and proper Defendants in the case. Dickson Dec. ¶ 7. In addition, Defendant identified these entities in the Statement of Interested Parties it filed with the Court. Dickson Dec. ¶ 7.

1 The Commission is the federal agency charged by Congress with the interpretation,
2 administration, and enforcement of a number of federal statutes banning employment
3 discrimination, including the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12112,
4 12117. In this capacity, the Commission filed the underlying Complaint in this action alleging
5 unlawful employment practices in violation of section 102(a) and (b)(5)(a) of the ADA, 42
6 U.S.C. §12112(a) & (b)(5)(a).

7 In this case, Ms. Stege seeks to bring individual federal claims for discrimination
8 against her based on her disability and failure to accommodate her disability. These claims
9 parallel those brought by the EEOC. In addition, Plaintiff seeks to bring parallel state claims
10 under the California Fair Employment and Housing Act for discrimination based on disability,
11 failure to accommodate, and failure to take steps to prevent such discrimination. Cal. Gov’t
12 Code §§12926, 12940(a, k, & m). These state claims arise from the same operative facts as the
13 federal claims and will therefore not increase the scope of discovery in this matter. Plaintiff
14 asks this Court to assert pendent and supplemental jurisdiction over her state claims because the
15 state and federal claims share a common nucleus of operative fact. Similarly, the Court should
16 assert jurisdiction over the state law claims because the evidence needed to resolve the state law
17 claims substantially overlaps with the evidence needed to resolve the federal court claims. *See,*
18 *Trichtler v. County of Lake*, 358 F.3d 1150, 1153 (9th Cir. 2004).

19 Janet Stege now seeks to intervene as party Plaintiff as a matter of right in this action
20 against Defendants Georgia-Pacific Corrugated, LLC and Georgia-Pacific Holdings, LLC, to pursue
21 her remedies for compensatory and punitive damages, as well as equitable relief under federal
22 law, and her state law claims for disability discrimination and failure to accommodate.

23 As set forth in the Declaration of Kathryn Burkett Dickson filed with this motion, the
24 EEOC filed its Complaint just five months earlier in August, 2007. The Complaint in
25 Intervention will result in no delay of the trial date or pre-trial deadlines established by the
26 Court. Dickson Dec. ¶¶ 8 & 9.

1 **II. ARGUMENT**

2 **A. Pursuant to FRCP 24(a)(1), Plaintiff/Intervenor May Intervene as a Matter**
 3 **of Right in this Action.**

4 Rule 24 of the Federal Rules of Civil Procedure ("Rule 24") provides in relevant part:

5 (a) Intervention of Right. Upon timely application anyone shall be
 6 permitted to intervene in an action: (1) when a statute of the United
 7 States confers an unconditional right to intervene . . .

8 The ADA (incorporating provisions of Title VII) expressly provides an aggrieved
 9 employee the right to intervene in a civil action brought by the Commission. *See* 42 U.S.C.
 10 §12117(a) (incorporating 42 U.S.C. §2000e-5(f)(1)); *EEOC v. Westinghouse Electric*
 11 *Corporation*, 675 F.2d 164, 165 (8th Cir. 1982). Since the relevant statute confers an
 12 entitlement to intervene as of right, Plaintiff/Intervenor Janet Stege must be allowed to
 13 intervene so long as her motion is timely.

14 **B. Plaintiff/Intervenor's Request to Intervene is Timely.**

15 Rule 24(a) requires, as a condition precedent, that the application to intervene be timely.
 16 It is within the Court's discretion to determine if this motion is timely. *Yniguez v. Arizona*, 939
 17 F.2d 727, 731 (9th Cir. 1991). Among the factors to be considered in determining timeliness
 18 are: (1) how far the proceedings have gone when the movant seeks to intervene; (2) the
 19 prejudice which resultant delay might have caused the other parties; and (3) the reason for and
 20 length of the delay. *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978); *County of*
 21 *Orange v. Air California*, 799 F.2d 531, 537 (9th Cir. 1986); *U.S. v. State of Washington*, 86
 22 F.3d 1499, 1503 (9th Cir. 1996).

23 In determining whether a motion to intervene is timely, a court should broadly construe
 24 the requirements of Rule 24 in favor of the moving party. *Westlands Water District v. United*
 25 *States*, 700 F.2d 541, 563 (9th Cir. 1983). In this case, where the intervention is sought as a
 26 matter of right, a court should be even more lenient in applying the timeliness requirement.
 27 *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

28 While early intervention is favored, the court will consider whether any of the existing

1 parties are significantly prejudiced by the fact that the moving party failed to seek intervention
2 at an earlier time. *United States v. Jefferson Co.*, 720 F.2d 1511, 1517 (11th Cir. 1983). In this
3 case, Janet Stege seeks to intervene five months after the filing of the underlying action by the
4 EEOC. The only discovery which has occurred are the exchange of Initial Disclosures by the
5 existing parties, and the EEOC has responded to one set of interrogatories and one set of
6 requests for production by Defendant. No depositions have been taken; no mediation has
7 occurred; and no motions have been brought by any party. Dickson Dec. ¶ 8. One case
8 management conference has occurred, and the Court has set the trial date, and pre-trial
9 deadlines. The intervention of Ms. Stege will not delay the trial, the conclusion of discovery, or
10 any other pre-trial deadline. *Id.* An intervention motion is considered timely when, as in this
11 case, it is brought during the initial stages of discovery. *National Organization for Women v.*
12 *Minnesota Mining and Manufacturing Co.*, 111 F.E.P. Cases 720 (D.Minn. 1975).

13 Defendant may claim that Ms. Stege's deposition, which had been scheduled for
14 January 8, 2008, was continued because of this motion to intervene. Dickson Dec. ¶ 5.
15 However, Ms. Stege's counsel informed defense counsel she was ready to proceed on that date.
16 Defense counsel chose to put the deposition over until after the intervention motion is heard
17 and decided. That is, of course, within Defendant's right; but, that is a choice Defendant has
18 made. Furthermore, Ms. Stege's counsel asked Defendant to stipulate to this intervention since
19 it is as a matter of right, which would obviate any delay. Defendant refused to agree, and
20 forced Ms. Stege to make this formal motion, which cannot be heard because of the Court's
21 calendar until March 4, 2008. Thus, any delay in completion of Plaintiff's deposition is
22 occurring because of Defendant's refusal to stipulate to this intervention, and was within their
23 control. *Id.* In any event, as noted above, there will be no delay in the trial date or completion
24 of pre-trial preparation by virtue of this motion or an order granting intervention.

25 If necessary, courts will examine the reason for and the length of delay when a party
26 seeks to intervene in case. Here, however, the delay was minimal and the prejudice non-
27 existent. Defendants were aware within 90 days of the filing of this action that Ms. Stege was
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1 seeking private counsel. She was able to meet with Ms. Dickson on December 28, 2007, and
2 this motion is being filed approximately two weeks later.

3 Applying the foregoing considerations to the facts presented here, the request to
4 intervene should be determined to be timely made.

5 **III. CONCLUSION.**

6 For all the reasons set forth above, Plaintiff/Intervenor Janet Stege respectfully requests
7 that her motion to intervene in the instant action be granted, and that she be permitted to file the
8 Complaint in Intervention attached as Exhibit A to the Declaration of Kathryn Burkett Dickson.

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10 Dated: January 10, 2008

DICKSON - ROSS LLP

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12 By: /S/ Kathryn Burkett Dickson
13 Kathryn Burkett Dickson
14 Attorneys for Plaintiff/Intervenor
15 JANET STEGE
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